

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.85 OF 2006

Shri Suresh Puri S/o. Shri Balakram Puri,)
adult, Indian Inhabitant, R/o. 124-A, Aarya)
Samaj Road, Uttam Nagar, Delhi - 110 059.) ... Appellant

Versus

Sneha Suresh Puri, adult, Indian Inhabitant,)
resident of Marian House TPS III, 29th)
Road, Bandra (W), Mumbai - 400 050.) ... Respondent

Mr. Sadanand S. Pandit for the appellant.
Ms. Sonal i/b M/s. L.J. Law for the respondent.
Ms. S.S. Puri, the respondent is present in person.

CORAM : **SMT. RANJANA DESAI &
SMT. V.K. TAHILRAMANI, JJ.**

DATED : **26TH SEPTEMBER, 2006.**

ORAL JUDGMENT :- [Per Smt. Ranjana Desai, J.]

Admit. Respondent waives service. By consent of parties, taken up for final hearing.

1. The original petitioner in M.J. Petition No.1236 of 2000 has challenged in this family court appeal, order dated 11/7/2006 passed by Family Court at Bandra, Mumbai, whereby his petition is dismissed in default on account of his failure to comply with order dated 4/7/2005 (for convenience, we shall refer to him as "the petitioner"). The order has been passed by the Family Court under the provisions of Order XXXIX Rule 11(1) of the Code of Civil

Procedure, 1908 (for short, "the CPC").

2. It appears that on 4/7/2005, the application was moved by the respondent seeking direction to the petitioner to produce documents stated in paragraph 4 of the application. The said documents are passport, ration card, details of bank accounts in Delhi, Mumbai or any place in India and abroad, Income-tax Returns and PAN Card, the title deeds of Flat No.6, Sholay Building at Andheri. Mumbai. The respondent had also sought production of some other documents. On that day, the power of attorney holder of the petitioner was present. The power of attorney holder agreed to produce the aforementioned documents. The request of the respondent for production of other documents was, however, rejected. It appears that though the power of attorney holder had expressed willingness to produce the above documents, they were not produced and, therefore, the respondent preferred an application under Order XXXIX Rule 11(1) of the CPC stating that the petitioner had intentionally defied the order dated 4/7/2005 whereby the petitioner was directed to produce the said documents and, therefore, the petition be dismissed. By the impugned order, the Family Court dismissed the petition in default and, hence, this family court appeal.

3. We have heard the learned counsel appearing for the parties. Mr. Pandit, the learned counsel for the petitioner contended that the petitioner

does not have any bank account in Delhi, Mumbai or any place in India or abroad and, there is no question of furnishing any bank account details. He submitted that the petitioner does not file any Income-tax Return and, he does not have any PAN Card and, hence, there is no question of giving any details thereof. So far as the passport, ration card and his title deeds in respect of flat being Flat No.6, Sholay Building at Andheri. Mumbai are concerned, Mr. Pandit pointed out that the said documents are on record of First Appeal No.1310 of 1998 filed by the respondent in this court. He contended that in the circumstances, it was not possible for the petitioner to produce the said documents, but the power of attorney holder of the petitioner inadvertently made a wrong statement.

4. As directed by this court, the office has produced the record of the said first appeal. In our presence, the learned counsel for the respondent has taken inspection of the said record. The passport, ration card and the title deeds in respect of the said flat are, in fact, found in the said record. A xerox copy of the ration card issued in Delhi in the year 1990 and also original ration card issued in Delhi in the year 1997 are on record. There is also a xerox copy of the petitioner's passport for the period 2005-2020. The xerox copy of the latest passport has been brought by Mr. Pandit to this court today and, in our presence, the learned counsel for the respondent has taken inspection thereof. In fact, the xerox copy of the recent passport has been handed over

by Mr. Pandit to the learned counsel for the respondent.

5. In Ramavatar Surajmal Modi v. Mulchand Surajmal Modi, AIR 2004 Bombay 212, this court was dealing with a question as to whether Order XXXIX Rule 11(1) of the CPC (Bombay Amendment) introduced in Maharashtra by Notification dated 5/9/1983 is mandatory or directory. After considering the relevant provisions and the case law on the point, this court has come to the conclusion that the said provision is directory and not mandatory. Order XXXIX Rule 11 reads thus:

*“11. Procedure on parties defying orders of Court, and committing breach of undertaking to the Court. -
(1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any default in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach is committed by the defendant or the opponent.*

(2) The Court may, on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or

contravention or breach to the satisfaction of the Court.”

6. A bare reading of this provision is sufficient to conclude that in a given case, on sufficient cause being shown, the court can restore the suit or proceedings or may hear the party in defence, on such terms and conditions as it may deem fit if the party that has been responsible for the default or contravention or breach as aforesaid makes amend for the default or contravention or breach to the satisfaction of the Court. It is obvious that this provision is not meant to needlessly penalize a party. Admittedly, some of the documents are, in fact, filed in this court in First Appeal No.1310 of 1998. Therefore, in our opinion, in the interest of justice, the impugned order needs to be set aside.

7. The respondent's counsel has taken inspection of the said documents from the record of First Appeal No.1310 of 1998. Since the respondent wanted the said document to be produced to enable her to file her written statement, production of xerox copies should suffice. If the said documents are to be produced in evidence, at any stage, the matter will have to be examined in the light of section 14 of the Family Courts Act, 1984 and if necessary in the light of the Evidence Act.

8. Since, the learned counsel for the petitioner has made a statement that the petitioner has no bank account in Delhi, Mumbai or any place in India and abroad and, he does not have any PAN Card, he certainly cannot be asked to produce such documents. In this connection, the Family Court can, if it deems fit, take steps to find out whether this statement is correct or not. This may include the Family Court sending summons to the Income-tax Department and also calling upon the Bank Managers of the banks in which, according to the respondent, the petitioner has bank accounts to furnish particulars thereof. Needless to say that if ultimately it is found that the petitioner does have a bank account and he is filing Income-tax Returns, necessary consequences will follow. The statement made by the learned counsel on behalf of the petitioner that he does not have any bank account and he does not file the Income-tax Returns is already recorded by us.

9. The learned counsel for the respondent has drawn our attention to the rozanama of the Family Court. She pointed out that after the power of attorney holder of the petitioner allegedly made a wrong statement on 4/7/2005 that she will produce the said documents, the matter appeared on board on several occasions. On 7/12/2005, 16/12/2005, 7/7/2006 and 11/7/2006, the petitioner was present. Yet no prayer was made by him for modification of order dated 4/7/2005. This has resulted in procrastination of the proceedings causing great inconvenience to the respondent and, hence,

the petitioner may be saddled with costs.

10. Grievance of the respondent is justified. If an incorrect statement was made by the power of attorney holder, nothing prevented the petitioner from seeking modification of the order dated 9/7/2005, particularly when he was present in the Court on several occasions thereafter. He must, therefore, be saddled with costs.

11. In the circumstances, we pass the following order :

“O R D E R”

12. The petitioner shall pay costs quantified at Rs.30,000/- to the respondent within a period of four weeks from today. On such payment being made, the impugned order dated 11/7/2006 will be set aside. The Family Court shall allow the petitioner to produce copies of the documents which are lying in the record of this court in the light of this judgment. The learned counsel for the respondent states that the passport, which is produced in the court, is for the period 2005-2020. She says that details of passport for the relevant period 1990-2005 are not available. The petitioner shall submit the said details to the Family Court. All contentions of both sides are kept open. Family court appeal is disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]

[SMT. V.K. TAHILRAMANI, J.]